

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HILLSIDE DAIRY, INC., et al.,

Plaintiffs,

v.

A.G. KAWAMURA, Secretary, California
Department of Food &
Agriculture, et al.,

Defendants.

CIV-S-97-1179 GEB JFM

**STIPULATION AND ORDER
MODIFYING PERMANENT
INJUNCTION**

PONDEROSA DAIRY, et al.,

Plaintiffs,

v.

A.G. KAWAMURA, Secretary, California
Department of Food &
Agriculture, et al.,

Defendants.

CIV-S-97-1185 GEB JFM

RECITALS

WHEREAS, on May 11, 2004, this Court entered an order granting summary judgment in favor of Plaintiffs ("Summary Judgment Order");

WHEREAS, the Summary Judgment Order permanently enjoined Defendants from enforcing Section 900 of the California Department of Food and Agriculture Pooling Plan for Market Milk on interstate raw milk sales ("Injunction");

WHEREAS, on June 2, 2004, Defendants filed their Notice of Appeal of the Summary Judgment Order;

WHEREAS, on June 16, 2004, Plaintiffs filed their Notice of Cross-Appeal of the Summary Judgment Order;

WHEREAS, on September 3, 2004, this Court denied Defendants' request to stay the Injunction pending the resolution of Defendants' appeal;

WHEREAS, on December 9, 2004, this Court granted Plaintiffs' motion for attorneys' fees and costs and ordered Defendants to pay \$2,517,696.49 in attorneys' fees and \$14,405.30 in costs ("Fee Award");

WHEREAS, pursuant to a Stipulation and Order entered by this Court on August 19, 2005, Plaintiffs are permitted to file their first supplemental request for attorneys' fees on or before October 14, 2005;

WHEREAS, Plaintiffs have demanded from Defendants reimbursement for all monies that Plaintiffs allege were unlawfully taken and withheld as a result of the now-enjoined 1997 amendments to the Pooling Plan;

WHEREAS, Defendants deny that they have violated Plaintiffs' Constitutional rights as held by this Court in the Summary Judgment Order;

WHEREAS, after negotiation with and through the Mediator for United States Court of Appeals for the Ninth Circuit, the parties have voluntarily decided to settle all their existing claims, appeals, and other disputes by entering into a final settlement agreement ("Settlement Agreement") that would dispose of this action in the District Court as well as in the Court of Appeals;

1 WHEREAS, the terms of the Settlement Agreement provide that the settlement is
2 contingent upon the parties obtaining a modification to the Injunction that would limit the
3 Injunction's application to milk produced outside of California ("Proposed Modified Injunction")
4 because, *inter alia*, Defendants have expressed concern that the Injunction is broader than needed
5 to remedy the unconstitutional discrimination found in the Summary Judgment Order and may
6 interfere with Defendants' otherwise lawful regulations now or hereafter promulgated;

7 WHEREAS, Plaintiffs are satisfied that the Proposed Modified Injunction is nonetheless
8 broad enough to protect the interests of out-of-state dairy farmers as articulated in this lawsuit;

9 WHEREAS, this Stipulation is expressly conditioned upon and dependent upon the Court
10 signing and entering this Stipulation as an Order; and

11 THEREFORE:

12 **STIPULATION**

13 IT IS HEREBY STIPULATED AND AGREED, by and between the parties, through their
14 counsel of record, that the Injunction shall be modified to limit the Injunction's application to milk
15 produced outside of California.

16
17 **IT IS SO STIPULATED.**

18
19 Dated: September 28, 2005

20 Bill Lockyer
Attorney General of the State of California

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22 By: /s/ Linda Berg
23 LINDA BERG
24 Deputy Attorney General
Attorneys for Defendants
California Secretary of Food & Agriculture, *et al.*

25 Dated: September 28, 2005

26 Thelen Reid & Priest LLP

27 By: /s/ Charles M. English, Jr.
28 CHARLES M. ENGLISH, JR.

Attorneys for Plaintiffs
Hillside Dairy, Inc., *et al.* (No. 97-1179)

Dated: September 28, 2005

Law Offices of John H. Vetne

By: /s/ John H. Vetne
JOHN H. VETNE
Attorneys for Plaintiffs
Ponderosa Dairy, *et al.* (No. 97-1185)

I, John Foust, hereby attest that I have obtained the authorization of the attorney signatories to this document to electronically sign on their behalf.

Dated: September 28, 2005

Thelen Reid & Priest LLP

By: /s/ John Foust
JOHN FOUST
Attorneys for Plaintiffs
Hillside Dairy, Inc., *et al.* (No. 97-1179)

ORDER

Defendants are hereby permanently enjoined from enforcing Section 900 of the California Department of Food and Agriculture Pooling Plan for Market Milk on raw milk produced outside of California.

The permanent injunction previously issued by this Court pursuant to an Order entered on May 11, 2004 [Order, May 11, 2004, CIV-S-97-1179, Docket Entry No. 336, at p. 9:1-2], is hereby revoked, revised, and replaced with the paragraph immediately preceding this one.

IT IS SO ORDERED.

DATED: September 29, 2005

/s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
United States District Judge